

MALIBU COASTAL ACCESS PUBLIC WORKS PLAN

Preparation of the Public Works Plan also enables the Conservancy and MRCA to achieve efficiency in the permitting phase. Absent a comprehensive plan, a coastal development permit is required for each individual access project, including individual environmental documentation, a lengthy and expensive process. Under the Public Works Plan one programmatic environmental document will be prepared, and once the Public Works Plan and the environmental documentation receive Coastal Commission approval, the subsequent review and approval of the individual projects is streamlined.

At the same time as streamlining the process, using the Public Works Plan approach preserves full opportunity for local input. Where the Coastal Commission has certified a local government's local coastal program, which is the case with the City of Malibu program, the Commission reviews the public works plan for consistency with that certified program, in full consultation with the local government.

In order to determine consistency with the policies of Chapter 3 of the Coastal Act regarding coastal resources planning and management, all public works plans must contain sufficient information regarding the kind, size, intensity and location of development activity that the agency proposing the plan intends to undertake. Those information requirements include:

- Specific type of activity or activities proposed to be undertaken;
- Maximum and minimum intensity of activities proposed to be undertaken;
- Maximum size of facilities proposed to be constructed and the proposed timetable for precise definition of all projects and any phasing of development activity;
- Service area for the proposed activity or activities;
- Proposed method of financing; and
- Proposed location or alternative locations considered for any development.

The proposed Public Works Plan will describe each accessway intended for public use development, along the Malibu coast between Lechuza Beach and Las Tunas Beach. (See Exhibits 1, 2, 3 and 4). As the first step in the process, MRCA will develop or refine conceptual site plans sufficiently to analyze site feasibility and any potential environmental impacts. The conceptual site plans will analyze public use site development necessary to enable the public to pass over and through land to the coast, which may include, but is not limited to, construction or re-construction of stairways, at-grade paths and gates, viewing platforms, bridges, restrooms, parking areas, and signage.

MRCA is particularly well-suited to carry out this Public Works Plan project. MRCA is familiar with the requirements of the public works planning process. Recently, MRCA completed one other public works plan for the Santa Monica Mountains Conservancy (SMMC). Additionally, MRCA and the Conservancy are longstanding project partners, working together on public access in Malibu. In fact, MRCA holds the public property interest in the vast majority of Malibu public accessways, including those already open to the public. Finally, as a joint powers agency comprised of two regional park districts and the SMMC, the MRCA has a direct interest and commitment to providing public access to coastal lands. Formed in 1985 to manage lands for public use and wildlife habitat in Los Angeles and Ventura counties, the MRCA has constructed numerous park and access facilities. It operates and manages almost 60,000 acres of public lands, including managing the Conservancy's accessway at Escondido Beach (formerly

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known as "Seacliff"). The MRCA also holds the public access easements at two other Malibu coastal access properties, Carbon Beach Accessway (formerly known as "Geffen") and Latigo Shores. At Escondido Beach, the MRCA holds an easement for public open space and resource protection, just downcoast of the privately-owned Paradise Beach, dedicated as a condition of a Coastal Commission coastal development permit. Additionally along the Malibu coast, the MRCA holds property in fee and easements for public access at Lechuza Beach and at Las Tunas Beach.

Site Description: The proposed Public Works Plan involves the following properties, over which the Conservancy or MRCA holds either fee title or an easement for public access, or where there is a deed restriction in favor of public access (See Exhibits 3 and 4):

- (A) **Las Tunas Beach:** 19016 Pacific Coast Highway ("PCH"); fee owner Harner; deed restriction in favor of public access; 19020 PCH; fee owner: Hundley; public access easement owner: MRCA.
- (B) **Las Tunas Beach:** no street address: Los Angeles County Assessor Parcel Nos: 4449-007-013, -014, -015, -016 and -017; fee owner: MRCA.
- (C) **Las Flores Beach:** 20802 PCH; fee owner: Lent; public access easement owner: State of California for benefit of the Conservancy.
- (D) **La Costa Beach:** 21554 PCH; fee owner: Wayne; deed restriction in favor of public access.
- (E) **La Costa Beach:** 21664 PCH; fee owner Conservancy.
- (F) **Carbon Beach:** 22030 PCH; fee owner Pozzo/Keith; deed restriction in favor of public access.
- (G) **Carbon Beach:** 22466 PCH; fee owner: Ackerberg; public access easement owner: MRCA.
- (H) **Malibu Cove Beach:** 26834 Malibu Cove Colony Road; fee owner: Toberman; deed restriction in favor of public access.
- (I) **Escondido Beach:** 27400 PCH (aka "Geoffreys Restaurant"); fee owner: Holiday House, LLC and 27348 PCH; fee owner Finer Space Malibu LLC; vertical public access easement owner: MRCA. (NOTE: easement begins at Geoffreys Restaurant, passes across Escondido Beach Road (private street) and continues over 27348 Pacific Coast Highway (residential parcel on the beach).
- (J) **Escondido Beach:** 27700 PCH; fee owner Dick Clark; deed restriction in favor of public access;
- (K) **Escondido Beach:** 27910 PCH; fee owner: Wildman; parking access easement owner: Conservancy; also at adjacent property 27920 PCH; fee owner: Mancuso; vertical public access easement owner: Conservancy.
- (L) **Lechuza Beach:** no street addresses available for Los Angeles County Assessor Parcel Nos (APNs): 4470-021-900; 4470-028-900 through 918; 4470-001-900, 4470-024-900, 901; fee owner for public access: MRCA; easements over West Sea Level Drive and East Sea Level Drive, APNs 4470-021-008, 009; easement owner: MRCA; APNs 4470-001-003, 004, 005, 006, 008, 012, 013; lateral beach access easement owner: MRCA; and 31736 Broad Beach Rd; fee owner: Barbara J. Page, trustee; vertical public access easement owner: Conservancy.

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Litigation:

There is pending litigation against or by the Conservancy on three of the accessways included in the proposed Public Works Plan: At Carbon Beach, Ackerberg (*Ackerberg v. California Coastal Commission et al.*, Los Angeles Superior Court Case No. BS122006, , California Court of Appeal, Second Appellate District, Division 1, Case No. B235351, and related litigation, including *Access for All v. Ackerberg*, Los Angeles Superior Court Case No. BC405058); at Lechuza Beach (*Malibu-Encinal Homeowners Association v. Mountains Recreation and Conservation Authority, et al*, Los Angeles County Superior Court, Case No. BS 431798); and at Escondido Beach, Wildman (*Wildman v. California Coastal Commission*, Los Angeles Superior Court Case No. SC111748). (For more details, see Conservancy public records maintained at <http://scc.ca.gov/webmaster/ftp/malibu/>).

Historically, there has been litigation on almost every one of the accessways included in the proposed Public Works Plan. (See <http://scc.ca.gov/webmaster/ftp/malibu/>). Since the late 1970's, the Conservancy and the Coastal Commission have spent approximately \$1.5 million in litigation costs defending the public interest in all Malibu public accessways, including the accessways in the proposed Public Works Plan.

Project History:

In order to meet its legislative mandate of maximum coastal public access, the Conservancy has endeavored to provide public access to Malibu beaches for decades. Historically, many Malibu residents have not welcomed public use of the local beaches, and the City, once it formed in 1990, was similarly reluctant. Additionally, the Conservancy's efforts were stymied by the lack of a local partner, which could hold and manage these public accessways. On September 20, 1995, the Conservancy authorized a management agreement with the MRCA for public access management at Escondido Beach. Then in 2002, the MRCA again filled this role by purchasing with Conservancy funds, fee and easement interests for public access purposes at Lechuza Beach. Most recently, the MRCA accepted the public access easements formerly held by Access For All, and in July of 2012, the MRCA acquired fee title to property for public access at Las Tunas Beach. MRCA now manages public access properties at Carbon, Escondido and Lechuza Beaches, and will construct a public access stairway on the Conservancy's Malibu Road property (24038 Malibu Road), tentatively scheduled for construction in summer 2013 (please note that this project is not included in this proposed Public Works Plan).

For some accessways included in the proposed Public Works Plan, the Conservancy's endeavors to provide public access over its (or its public partner's) easements and fee properties have met with inordinate local opposition and decades of attempts have still not resulted in the opening of these properties to full public access. Below is a summary of the Conservancy's attempts to provide public access amenities at certain locations and the current status of those efforts. This summary provides the Conservancy rationale for including these properties in its proposed Public Works Plan project.

Carbon Beach (property owner: Ackerberg; public access easement owned by MRCA) The Ackerberg easement was created by the acceptance of an offer to dedicate (required of Ackerberg as a condition to a local coastal development permit) by a nonprofit organization, Access for All (AFA), in December 2003. In accepting ownership of the easement, AFA agreed to first survey the easement for encroachments, then plan for the development of the accessway and subsequently to develop and open the easement for public access. AFA undertook a survey

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in September 2005, which identified a number of improvements that Ackerberg had made without permits in the easement area.

In December 2005, the Commission initiated the administrative enforcement process, notifying Ackerberg of the encroachments and requiring their removal. The administrative enforcement process was delayed by Ackerberg's numerous requests for additional time and for hearing continuances and by serial litigation, including a lawsuit by a neighbor (*Roth v. Commission et al.*), challenging the validity of the offer to dedicate and the resulting easement. A lawsuit by AFA against Ackerberg (*AFA v. Ackerberg*) sought removal of the encroachments, but was settled by AFA without involvement or approval by the Conservancy or Commission on terms which compromised the viability of the easement. Finally, Ackerberg sued (*Ackerberg v. Commission, et al.*) challenging the Commission's "cease and desist order" that was issued following a hearing in July 2009.

The challenge to the easement by the *Roth v. Commission* case was rejected by the trial court and again on appeal and, in July 2008, the California Supreme Court refused to review the Court of Appeal decision. Ackerberg's challenge to the Commission order to remove encroachments in *Ackerberg v. Commission et al.* was likewise rejected by the trial court and then by the Court of Appeal, whose decision was issued in August 2012, and, just recently, Ackerberg's petition for review was denied by the California Supreme Court. The Commission and the Conservancy brought a motion to intervene and vacate the agreed judgment entered in *AFA v. Ackerberg*, as contrary to the public interest and to the obligations of AFA to preserve, develop and open the easement.

At its September 2011 meeting, the Conservancy determined that AFA had failed to carry out its agreed obligations to preserve, develop and open the easement and, accordingly, authorized the transfer of the easement to another qualified entity. MRCA subsequently accepted and is the current holder of the easement. (For history, see <http://scc.ca.gov/webmaster/ftp/malibu/>)

Lechuza Beach: (Fee and easement ownership by MRCA): Owned by MRCA since 2002, MRCA and the Conservancy attempted to co-author a management plan with the local Homeowner's Association, MEHOA. In 2007, the MRCA submitted its coastal development permit for access improvements on its Lechuza Beach property to the City of Malibu; that permit application remains incomplete due to continuing changes in the project plan resulting from attempts to satisfy the continuing but changing concerns of MEHOA over location of and design for disabled parking access, restroom, and signage as well as management terms and conditions. In 2009, MEHOA sued the Conservancy and the MRCA. (For history, see <http://scc.ca.gov/webmaster/ftp/malibu/>)

Escondido Beach: (Property owners: Mancuso(vertical)/Wildman (parking); vertical and parking easements owned by Conservancy): In July 1996, Frank Mancuso sued the Conservancy after the Conservancy, at its September 20, 1995 public meeting provided a grant to the MRCA for management of accessways at Escondido Beach, including the vertical accessway over the Mancuso (formerly known as Chiate) property and the complementary public access parking easement over the adjacent Donahue Wildman property. Mr. Wildman signed the 1998 settlement agreement along with Mr. Mancuso, settling this litigation over notice and access to Mancuso/Wildman properties for public access feasibility studies on the easements over the fee